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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/569,174

02/22/2006

Nathalie Dorothee Pieterneel Leurs

NL 031040

2013

24737

7590

04/17/2008

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

HANCE, ROBERT J

ART UNIT

PAPER NUMBER

4134

MAIL DATE

DELIVERY MODE

04/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/569,174	Applicant(s) LEURS ET AL.	
	Examiner ROBERT HANCE	Art Unit 4134	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>02/22/2006; 12/27/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 6 is objected to because of the following informalities: The preamble to claim 6 reads "The method of claim 1, comprising:" Examiner suggests that this should read "The method of claim 1, **further** comprising:". Appropriate correction is required.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV, reads as follows:

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and *Warmerdam*, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).

In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and

the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

3. Claim 11 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claim 11 defines software embodying functional descriptive material. However, the claim does not define a computer-readable medium or memory and is thus non-statutory for that reason (i.e., "When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized" – Guidelines Annex IV). That is, the scope of the presently claimed software can range from paper on which the program is written, to a program simply contemplated and memorized by a person.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2, 4-5, 8-9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Agnihotri et al., US Pub No 2002/0178440.

As to claim 1 Agnihotri et al. disclose a method of enabling to render mass-market content information to a user, the method comprising enabling to use a profile of the user for control of processing the content information for the purpose of personalizing the rendering during play-out of the content information (Paragraphs 17-19, 21, 25; Fig. 3A-3C – profiles and biometric data are used to generate recommendations, thus the content is personalized for the particular user).

As to claim 2 Agnihotri et al. disclose the method of claim 1 wherein the profile comprises a dynamic part with biometric information about the user (Paragraph 17-19 – as per applicant's disclosure, paragraph 5, visual cues are considered biometric information).

As to claim 4 Agnihotri et al. disclose the method of claim 1, wherein the profile comprises information about a current activity of the user (Paragraph 18; Fig. 4).

As to claim 5 Agnihotri et al. disclose the method of claim 1, wherein the profile comprises a static part based on: history of the user, declared interest, a declared preference (Fig. 3A-3B; Paragraphs 25-28).

As to claim 8 Agnihotri et al. disclose a consumer electronics system for rendering mass-market content information to a user, the system comprising: a memory for storing a user profile (Fig. 1:110; Paragraph 25; claim 16); and a controller coupled to the memory for controlling a processing of the content for the purpose of personalizing the rendering during play-out of the content, under control of the profile (claim 16; Paragraphs 17-21; Paragraph 30-32; Fig. 4).

As to claim 9 Agnihotri et al. disclose the system of claim 8, further comprising: a sensor for sensing a current biometric attribute of a user (Fig. 1: 150-1 – 150-N capture visual and auditory signals; Paragraph 18. As per applicant's disclosure, paragraph 5, visual cues are considered biometric information); an interpreter coupled to the sensor and the memory for interpreting an output signal from the sensor within the context of the profile (Paragraphs 20-22; Fig. 1: see processor 120, viewer profiles 300).

As to claim 11 see similar rejection to claim 1. The control software of claim 11 corresponds to the method of claim 1. Therefore, claim 11 has been analyzed and rejected.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Agnihotri et al., US Pub No 2002/0178440 in view of Hoffberg et al., US Patent No 5,875,108.

As to claim 3 Agnihotri et al. disclose the method of claim 2, comprising acquiring the biometric information via a sensor (Paragraphs 17-18; Fig. 1: 150-1 – 150-N).

Agnihotri et al. fail to disclose that the sensor is coupled to the user. However, in an analogous art, Hoffberg et al. disclose adjusting user preferences by measuring certain biometric values, such as heart rate, blood pressure, etc (col. 34 lines 34-50). It would have been obvious to one of ordinary skill in the art at the time of the invention to use the biometric measuring system disclosed by Hoffberg et al. in the system of Agnihotri et al. The rationale for this combination would have been to take into account factors other than visual and auditory signals. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

8. Claims 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agnihotri et al., US Pub No 2002/0178440 in view of Kowald, US Pub No 2003/0002715.

As to claim 6 Agnihotri et al. fail to disclose providing metadata indicative of a mood affecting aspect of the content; and enabling to match the metadata against the profile for the control of the processing. However, in an analogous art, Kowald discloses providing metadata indicative of a mood affecting aspect of the content (Paragraph 45). It would have been obvious to one of ordinary skill in the art at the time of the invention to use the metadata as disclosed by Kowald in the system of Agnihotri et al. and to match the metadata against the profile for the control of the processing.

The rationale for this combination would have been to decide if a scene is suited to a viewer who is in a particular emotional state. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

As to claim 10 see similar rejection to claim 6. The system of claim 10 corresponds to the method of claim 6. Therefore, claim 10 has been analyzed and rejected.

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Agnihotri et al., US Pub No 2002/0178440.

As to claim 7 Examiner takes official notice of the fact that storing content for personalized rendering later on was well known in the art at the time of the invention.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT HANCE whose telephone number is (571)270-5319. The examiner can normally be reached on M-F 8:00am - 5:00am EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LunYi Lao can be reached on (571) 272-7671. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 4134

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. H./

Examiner, Art Unit 4134

/LUN-YI LAO/

Supervisory Patent Examiner, Art Unit 4134